

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2914 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

C G FERNODEZ

Versus

GUJARAT UNIVERSITY

Appearance:

MR AV TRIVEDI for Petitioner
MR SN SHELAT Sr. Advocate for Respondent NO.1
MR KATHA GAJJAR AGP for Respondent No. 2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 08/05/2000

C.A.V. JUDGEMENT

1. The petitioner has filed this petition under Article 226 of the Constitution of India and has challenged the decision of the Gujarat University - first respondent herein, to the effect that "term concession"

cannot be given to the petitioner and others as per their communication dtd. 4/3/89 as these students are from Universities other than Gujarat University and that the correction made in his Registration Certificate is liable to be cancelled and that he will be able to appear only October, 1989 Examination instead of March-April, 1989 Examination for Diploma to which he has been admitted.

2. The relevant facts of the case are as under ;

It has been alleged in the petition that the petitioner has done Graduation in Medicine from Outside Gujarat State i.e. from the Kerala University, a University recognised by University Grants Commission.

3. The petitioner applied to the office of Director, Postgraduate Studies & Research, B.J. Medical College, Ahmedabad for Diploma Registration and for that purpose, necessary Form of Gujarat University was filled in and the same was to be forwarded to the office of the Director.

4. In view of the said application, the Director, Postgraduate, Studies & Research, B.J. Medical College, Ahmedabad- respondent No.2 herein admitted the petitioner and others for Diploma (D.L.O.) for two years period from 25/11/87 to July, 1987, necessary communication has been produced at Annexure-A to the petition. The said admission was originally provisional, however, as per the communication of the University addressed to the D.N. Medical College dtd. 17/8/98, the aforesaid students are directed to be admitted and the decision has been taken by the University. The University decided to register the students admitted in November, 1987 as students of Regular Batch of July, 1987, copy of the said letter has been produced at Annexure-B to the petition. The Director, Postgraduate Studies and Research, B.J. Medical College, Ahmedabad by his communication dtd. 18/11/88 registered the petitioner for Postgraduate from 24th July, 1987 instead of November, 1987. The said communication has been produced at Annexure-C to the petition. It has been stated in the said communication that the said charges were effected on 29/10/1988 and accordingly, the petitioner was preparing and reading for the DLO Examination to be held on 29/4/89. It has been alleged that on the basis of the said registration, the petitioner has been admitted for an Advanced Course in Oto-Rhino-Laryngology in the American Medical Society of Vienna. The petitioner has paid his DLO Examination and Marks Statement Fees of Rs.104/- on 17/1/1989, copy of the same has been produced at Annexure-E to the petition.

5. It has also been alleged in the petition that the petitioner was away in his native place in Kerala, busy with his late father's obsequial ceremonies, he received on or around 30/3/1989 a redirected letter dtd. 4/3/1989 from the respondent No.1 to the effect that one term concession cannot be given to the petitioner and one another student as they are from University other than Gujarat University and that the correction made in their Registration Certificate is liable to be cancelled, and if he is aggrieved by the said decision, he may see the Vice Chancellor on 13/3/1989 if he has to make any representation in this regard, copy of the said letter is produced at Annexure-G to the petition.

6. It has been stated that the petitioner has returned from his native place on 16/4/1989 and has learnt that several other students had received similar letters from the respondent NO.1, however all of them have been permitted except the petitioner to retain the term concession and are consequently permitted to appear at their respective examinations on the corrected dates in their registration certificates. It has been stated that Dr. Shailesh K. Patel who was also with the petitioner made representation to the Chancellor and the Chancellor by order dtd. 3/3/1989 continued "term concession" in the case of Shailesh K. Patel The said letter has been produced at Annexure-H to the petition.

7. It has been stated that University has also addressed a letter to the Director of Postgraduate Studies and Research that though originally the petitioner was registered from 24th November, 1987 and was given registration for one term, however as he has studied in Kerala University, he cannot be able to obtain registration and the said decision has been taken by the Vice-Chancellor and one term registration is declared to be cancelled and instead of March-april, 1989, he may be allowed to appear only in October, 1989 Examination, copy of the same is annexed at Annexure-I to the petition.

8. It was submitted that after letter Annexure-I was received by the petitioner on 18/4/1989, the petitioner approached the Vice Chancellor on 20/4/1989 and requested him to reconsider his decision and permit him to appear in April, 1989 Examination for D.L.O. However, the Vice-Chancellor replied that as other students who have come from the Universities outside Gujarat State have filed Writ Petition for similar relief and the said Writ Petition allowed, and the petitioner may also suitably approach the Honourable court. The petitioner has submitted that Dr. Ashoka Valsala, Dr. Jayshree T. and

four other doctors/Post Graduate Degree Diploma Students had filed Special Civil Application NO. 4642 of 1988 and the said petition has been allowed by this Court (Coram : R.C. Mankad, J.).

9. It has been alleged in the petition that for Post Graduate Studies, either Degree or Diploma Course at the B.J. Medical College, the University has framed Rules. Under the Rules Diploma Course is ordinarily spread over a period of two years, in which there are four semesters each of six months. The Degree course is ordinarily spread over a period of three years, in which there are six semesters each of six months.

10. Post graduates degree/diploma courses in various medical faculties are conducted at B.J. Medical College at Ahmedabad, which is affiliated to the Gujarat University. Such courses are also conducted at other Colleges in the State of Gujarat. Post graduate degree courses are of three years duration while post graduate Diploma courses are two years duration. Each academic year is divided into two years, one commencing on 1st January and the other on 1st July. It has stated that the examination of Diploma Student who has joined January of one year would be taken in November of next year and the examination of student who has joined Diploma Course in July of one year would be taken in April of the second year.

11. For Post-graduate Studies, either Degree or Diploma Courses at the B.J. Medical College, the first Respondent University has framed. Rules. Under the Rules Diploma Course is ordinarily spread over a period of two years, four semesters of each of six months. The Degree course is ordinarily spread over a period of three years, six semesters, each of six months.

12. Mr. A.V. Trivedi, learned advocate for the petitioner has submitted that the decision of the respondent NO.1 cancelling the registration of the petitioner as student of July, 1987 Batch and the decision of not permitting the petitioner to appear at the D.L.O. Examination to be held in April, 1989, only on the ground that originally he has studied in Kerala University, is arbitrary and unconstitutional and also being violative of Article 14 of the Constitution and the same deserves to be quashed and set aside.

13. The learned counsel for the petitioner invited my attention to the order of this Court (Coram ; M.B. Shah, J. as he was then) dtd. 27th April, 1989 which reads as

follows ;

"Rule returnable on 3/7/89. Mr. Shalat, learned advocate waives service of rule. Ad-interim relief in terms of para 16(b). D.S. permitted."

14. Para 16(b) of the petition reads as follows;

16(b) "pending hearing and final disposal of this Petition, the Respondents be directed to permit the Petitioner to appear in the D.L.O. Examination commencing from 29/4/1989, however, result of the same may be made subject to the result of this petition."

15. Mr. Trivedi, learned advocate for the petitioner has stated that interim relief which was granted, is already availed of by the petitioner, however the same is subject to the result of the petition.

16. Mr. Trivedi, learned advocate for the petitioner has relied upon the decision of this Court rendered in Special Civil Application No.4642 of 1988, which is allowed by this Court (Coram : R.C. Mankad, J.) vide order dtd. 3/4/1989. The said S.C.A. was filed by similarly situated students against the Gujarat University against whom also order was passed. He has stated that so far as Dr. Shailesh Patel is concerned, he made representation to the Chancellor, and the Chancellor has condoned the said lapse and allowed him to appear in the Examination.

17. He has stated that so far as the petitioner is concerned, because of illness of petitioner's father, he could not make representation within stipulated time. He has been penalised in this behalf and therefore also the petitioner has been singled out and is said to be prevented from appearing at the DLO Examination. It is also stated that the decision of the university is also violative of principles of natural justice as on the one hand the University has stated by his communication dtd. 4/3/89 that if the petitioner wants to make representation to the Vice-Chancellor, he can see the vice Chancellor on 13/3/1989, whereas on the other hand, in the case of the petitioner, the Vice-Chancellor has already addressed the said letter on 3/3/1989 and cancelled the permission. So the communication dtd. 4/3/89 informing that his representation will be heard by the Vice Chancellor, is empty formality and he was not heard prior to 3/3/89 and therefore, the communication

dtd. 3/3/89 is violative of the principle of natural justice.

18. This Court (Coram : R.C. Mankad, J.) in Special Civil Application No.4642 of 1988, while allowing the said petition filed by the similarly situated student passed the following order on 3/4/1989 ;

"The University cannot, however, give different treatment to students belonging to the same class merely on the ground that they belong to different origin. By different origin what is meant is students who have passed M.B.B.S. Examination from the Universities of Gujarat State and students who have passed such examinations from the Universities outside Gujarat State. The treatment, which is given to the petitioners, is arbitrary and discriminatory and, therefore, it is open to this court to direct the University to give same treatment to the petitioners, which is given to other similar situated students"

"In the result, this petition is allowed. The Gujarat University respondent NO.1 herein and the Dean of the B.J. Medical College- respondent NO.2 herein are directed to permit the petitioners to appear at the examinations for the Post Graduate/Diploma Courses to be held in April, 1980. The petitioners shall be permitted to fill in forms for appearing at such examinations and these forms shall be accepted even if the time for submitting such forms is expired. If the examinations are to commence soon, the petitioners shall be permitted to appear at the examination as if they have duly filed in forms and their forms are accepted by the Gujarat University and the formality of submitting forms may be completed during the course of the examination or thereafter. Rule made absolute accordingly with no order as to costs."

19. In my view the ratio laid down in the aforesaid judgement is squarely applies to the present case also because in that case also the petitioner have passed final examination held by the University out of the State of Gujarat and as the University refused to grant the request of the petitioner they had filed the petition before this Court and this Court on identical facts allowed the petition.

20. In view of the aforesaid judgement of this and order of this Court, the present petition is allowed and I quashed and set aside the communication dtd. 3/3/89 addressed by the University to the Director of Education wherein the registration of the petitioner was cancelled. I am in respectful agreement with the reasonings given by this Court, In my view the order of the authority cancelling the registration of petitioner only on the ground that the petitioner has studied in Kerala is in correct in the eye of law, and there is no cogent and convincing reason for cancelling the registration for the petitioner only on that ground alone.

21. In view of the afodresaid judgement particularly the interim order dated 27/4/89 passed by this court wherein the petitioner was already permitted to appear for March-April, 1989 Examination, the same is hereby confirmed while allowing this petition. In view of that, further order in this behalf is not necessary.

22. In view of the above, the petition is allowed.
Rule made bsolute. No order as to costs.

Date : 8/5/2000. (K.M. MEHTA, J.)

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